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Exhibit
1UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEREMY RATLIFF (#247927),

Plaintiff,
v.

ANTHONY SIMMONS,

Defendant.

Docket No. 03 cv 60015

HON. MARIANNE O. BATTANI

10/27/04
P
2004

Christopher J. Trainor
McCall & Trainor
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John L. Thurber (P44989)
Assistant Attorney General
Attorney for Defendant Simmons
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Lansing, MI 48909

**DEFENDANT SIMMON'S BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR ATTORNEY FEES, COSTS AND INTEREST**

Statement of Facts

At trial, the Plaintiff brought three claims. He brought a federal law claim under the Eighth Amendment pursuant to 42 U.S.C. § 1983 and two state law claims, one for battery and another for gross negligence. The jury rejected the Plaintiff's federal claim and his battery claim. The jury awarded the Plaintiff \$62,000 for his gross negligence claim.

The Plaintiff's counsel, Mr. Trainor and Mr. Cabot, now request \$75,110 in attorney's fees.¹ Counsel also brought a motion for costs and finally, they brought a motion seeking pre and post judgment interest. This Court should deny their motion as to attorney's fees, disallow most of the costs they are seeking, and reject their claims for pre and post judgment interest.

At the outset, the Defendant wishes to point out that this Court has not yet entered a judgment based on the jury's verdict. Consequently, any discussion of attorney's fees and costs

¹ Mr. Cabot never filed an appearance on behalf of the Plaintiff.

is premature. However, since the Court will ultimately enter a judgment, the Defendant has chosen to address the Plaintiff's arguments on the merits.

L. The Plaintiff's counsel is not entitled to any attorney's fees under 42 U.S.C. § 1988 because the Plaintiff prevailed only on a state law claim.

42 U.S.C. § 1988(b) provides:

(b) Attorney's fees. In any action or proceeding to enforce a provision of sections 1977, 1977A, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of the Public Law 92-318 [20 USCS §§ 1681 et seq.], the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], or section 40302 of the Violence Against Women Act of 1994, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fees as part of the costs, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

The plain language of the statute makes it clear that the Plaintiff's counsel cannot receive attorney's fees for recovering on a purely state law claim. Michigan's gross negligence statute is not among the statutes listed in 42 U.S.C. § 1988(b). 42 U.S.C. § 1988(b) does not make any provision for recovering attorney's fees in federal court on a purely state law claim.

The Defendant directs this Court's attention to *Buero v. Trierweiler*, 616 F.Supp. 1414 (E.D. Mich 1985). *Buero, supra* is directly on point. The jury awarded two of the three plaintiffs damages based purely on state law claims for intentional infliction of emotional distress. Judge Harvey found that a jury verdict based purely on pendent state law claims was an insufficient basis to award attorney's fees under section 1988. *Id.*, at 1417. The Court based its holding on the Supreme Court's holdings in *Smith v. Robinson*, 468 U.S. 992 (1984), and *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

Similarly, the Circuit Court of Appeals for the District of Columbia held "[W]e agree with the view of our sister circuits which have uniformly held that a plaintiff who loses on the merits of its civil rights claim is not a 'prevailing party' for purposes of an award of attorney's

fees under 42 U.S.C. § 1988, even if it prevails on a related pendant state law claim.” *National Organization for Women v. Operation Reserve*, 37 F.3d 466 (D.C. Cir. 1994).

Buero and *National Organization for Women*, along with the plain statutory language of section 1988 make it clear that under the circumstances of this case, the Plaintiff’s counsel is not entitled to any attorney’s fees under section 1988.

Plaintiff’s counsel cites absolutely no case law to support their contention that recovery solely on a state law claim entitles them to attorney’s fees under section 1988. Moreover, such an interpretation would fly in the face of the purpose of section 1988 which is to vindicate the violation of Federal Civil Rights. Accordingly, this Court should not permit the Plaintiff’s counsel to recover any attorney’s fees.

II. The Prison Litigation Reform Act (“PLRA”) limits the Plaintiff’s counsel’s fees to, at most, \$31,374.

42 U.S.C. § 1977e(d)(3) provides:

No award of attorney’s fees in an action described in paragraph (1) shall be based on an hourly rate, greater than 150 percent of the hourly rate, established under section 3006A of Title 18 for payment of court appointed counsel.

Consequently, Plaintiff’s counsel’s hourly rate is capped at \$135.00 (\$90 [the current hourly rate for appointed counsel in the Eastern District] x 1.5). Plaintiff’s counsel reported a total of 232.40 hours (143.15 hours by Mr. Trainor and 89.25 hours by Mr. Cabot). Therefore, assuming arguendo that Plaintiff’s counsel is entitled to fees under section 1988, he is entitled to, at most, \$31,374 (232.40 x \$135).

III. Pursuant to 42 U.S.C. § 1997e(d)(2), the Plaintiff should be required to pay for a portion of his counsel’s fees.

The PLRA contains a provision which permits this Court to require the Plaintiff to pay up to 25% of the judgment toward his attorney’s fees. 42 U.S.C. § 1977e(d)(2).

42 U.S.C. § 1977e(d)(2) provides:

Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

In the instant case, the jury awarded \$62,000 in damages. The Plaintiff's counsel are entitled to, at most, \$34,374.00 in fees under the Prison Litigation Reform Act. This Court should require the Plaintiff to pay \$15,500 ($62,000 \times .25$) of his counsel's fees. Therefore, pursuant to the PLRA, the Defendant would only owe the Plaintiff's counsel \$15,874 (\$31,374 - \$15,500) in fees.

IV. The Plaintiff's counsel's hourly rates are unreasonable.

If this Court awards the Plaintiff's counsel fees under section 1988, and if this Court rejects the fee cap of the PLRA, it still should reject their hourly rates as unreasonable.

A recent survey in the *Michigan Bar Journal*, the Economics of Law Practice (Exhibit 1), indicates that the median hourly rate for attorneys in Southern Oakland County is \$180.00 per hour. (Exhibit 1, p. 26). Mr. Trainor requests this Court to grant him an hourly rate of \$400.00 per hour.² Mr. Cabot requests a fee of \$200.00 per hour. The median hourly rate for practitioners with under 4 years of experience is \$150.00 per hour. (Exhibit 1, p. 25). By way of contrast, Defendant's counsel spoke with his father, John A. Thurber, a senior principal in the Troy office of Miller, Canfield, Paddock and Stone regarding his hourly rate. Mr. Thurber, Senior, who has been a member of the State Bar since 1968 and a principal at Miller, Canfield since 1972, currently bills at a rate of \$290.00 per hour. In light of these facts, Mr. Trainor's request for \$400.00 per hour is, quite frankly, absurd. -

He is asking for \$110.00 more per hour than a senior principal at one of the largest law firms in Michigan and one who has practiced in Michigan since 1968. Mr. Cabot who has a

² Mr. Trainor has been a member of the State Bar since 1988.

P number of 64021, which indicates that he is a relatively new member of the State Bar, certainly should be not be able to bill at \$20.00 more per hour than the median of all attorneys in Southern Oakland County.

Therefore, if this Court does award fees under section 1988 and rejects the fee cap of the PLRA, Mr. Trainor should be entitled to no more than \$180.00 per hour. Mr. Cabot should not be entitled to more than \$150.00 per hour.

V. This Court must disallow virtually all of the Plaintiff's costs pursuant to E.D. Mich L.R. 54.1.

E.D. Mich. L.R. 54.1 provides that costs are taxed pursuant to the *United States District Court for Eastern District – Office of the Clerk, Bill of Costs Handbook*. (Copy attached). Most of the costs that Plaintiff seeks are not permitted by the *Bill of Costs Handbook*.

Plaintiff's counsel submits Exhibits C to his motion for attorney's fees, costs and interest. Exhibit C gives a vague idea of his costs that counsel calls itemization. Defendant's counsel will oppose each item below.

Pursuant to the *Bill of Costs Handbook*, page 1, section I – Taxation of Costs by the Clerk, paragraph 4 states:

Before any bill of costs is taxed, it must be submitted on the proper form. A party claiming any item of costs of disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that services for which fees have been charged were actually and necessarily performed.

Counsel for Plaintiff has not submitted the required affidavit.

Paragraph 5 goes on to state:

It is counsel's responsibility to serve opposing counsel, provide the court with a certificate of service and attach a separate itemization and the documentation to support the claims made. Documentation may include receipts, orders and stipulation of the parties. Please be advised that counsel must ensure that any receipts are self-explanatory (i.e., receipts for service shall include the names of

the individuals, why they were served, where they were served, and the cost for service). Claims for docket fees under 28 § 1923 shall be broken down by fee. **The taxation clerk will disallow any expenses that do not have this supporting information.**

Plaintiff's counsel has provided four pieces of paper attached as Exhibit C that gives a vague idea of his alleged costs that counsel calls itemization, but the required documentation (receipts, orders, etc) has not been provided leaving counsel for Defendant wondering what each item is and how to respond.

The Defendant is not saying that Plaintiff's counsel is not entitled to any costs, rather he is saying that he cannot determine what costs the Plaintiff's counsel is entitled to based upon the records Plaintiff has submitted.

Page 2 of the *Bill of Costs Handbook*, section II – Discussion of Taxable Costs states:

The taxation clerk will review and tax costs in the following categories. Counsel is responsible for providing the required receipts, orders, stipulations or other documentation to support their bill of cost. The taxation clerk will deny costs without supporting documentation.”

Plaintiff's counsel did not provide any documentation, receipts, or orders. The *Bill of Costs Handbook* clearly spells out that counsel is responsible for providing these items.

Certified Mail and Federal Express Costs

Plaintiff's counsel wants to be able to recover “Certified Mail” costs in the amount of \$31.63 and “Federal Express” costs in the amount of \$81.15. Page 5 of the *Bill of Costs Handbook*, section G(2)(h) specifically states that Fees for postage (other than summons/subpoenas), delivery and notary fees are not taxable.

Therefore, costs for certified mail and federal express should be denied.

Process Service Fees

Counsel wants to recover "Process Service" fees in the amount of \$425.36. Counsel has provided no documentation or receipt for these costs. There is no indication as to who was served, what was served and on what date the claimed item was served.

Page 4 of the *Bill of Costs Handbook*, section D states:

D. Fees for Service of Summons and Subpoena

1. Taxable

- a. Service fees for summons and other initial process.
- b. Service fees for trial subpoenas for witnesses who **have** testified at trial.
- c. Service fees for deposition subpoenas of which the deposition transcript has been taxed as costs.
- d. Cost postage if service is executed by mail.
- e. United States Marshal fees pursuant to 28 U.S.C. § 1921.

***Service fees must be documented on the returned summons or subpoena and provided as an attachment to the bill of costs.**

2. Not Taxable

- a. Service fees for discovery subpoenas.
- b. Service fees for trial subpoenas for witnesses who **did not** testify.

Plaintiff's counsel wants to be able to recover his service fees but does not include any documentation as to what each item is, who the item was delivered to, or what date the item was mailed or delivered. Counsel does not include a proof of service, a receipt or documentation of any sort, therefore, counsel for defense cannot even begin to respond appropriately.

Page 2 of the *Bill of Costs Handbook*, section II – Discussion of Taxable Costs states:

The taxation clerk will review and tax costs in the following categories. **Counsel is responsible** for providing the required receipts, orders, stipulations or other documentation to support their bill of cost. The taxation clerk **will deny** costs without supporting documentation."

Therefore, costs for process service should be denied.

Witness Fees

Counsel also wants to recover "Witness Fees" in the amount of \$685.00. Counsel provides no documentation or receipt for these fees. Even though the fees are vaguely itemized to show how much each one was, there is no indication as to whom each listed witness fee was for, whether it was for a deposition, for trial, or both, if the witness attended, the date, and how much of each fee was for attendance and how much was for mileage, and how many miles were included in the mileage fee.

Pages 3 and 4 of the *Bill of Costs Handbook*, section C – Fees for Witnesses states:

C. Fees for Witnesses

If a witness is subpoenaed to the trial, but does not testify, or if a witness is deposed, but the transcript is not used at trial or in support of a motion, the taxation clerk *will not* tax the fees and disbursements as to that witness.

1. Taxable

- a. Attendance, mileage and subsistence fees, if applicable. These costs are taxable *only* for the day(s) a witness testifies.

* * *

**The attendance fee is currently taxed at \$40.00 per day.*

2. Not Taxable

- a. The expenses of witnesses who are themselves parties to the case.
- b. Compensation paid to an expert witness in *excess* of the statutory fees.

Expert Deposition Fee

Plaintiff's counsel attempts to recover his costs for expert depositions in the amount of \$1050.00. Page 4 of the *Bill of Costs Handbook* – section 2(b) clearly states that compensation paid to an expert witness in *excess* of the statutory fee is not taxable.

Therefore, costs for expert deposition fees should only be allowed as to the statutory fees.

Investigative Fees and Travel Expenses

Plaintiff's counsel attempts to recover his alleged investigative fees in the amount of \$2940.00 and his travel expenses in the amount of \$215.00.

Page 5 of the *Bill of Costs Handbook* – section G(2)(a) states:

(a) Attorney fees incurred in attending deposition, conferences and trial as well as expenses incurred by investigations are not taxable. [Emphasis added.]

Therefore, Plaintiff's costs for investigative fees and travel expenses should be denied.

Transcript and Videographer Fees

Counsel requests to recover his costs for transcript fees in the amount of \$ 1133.56 and videographer fee in the amount of \$600.00. Page 2 of the *Bill of Costs Handbook* – section B – Fees of the Court Reporter states:

Counsel is directed to attach to the bill of costs, a copy of the court's order directing preparation of transcript or the stipulation of parties agreeing to its preparation, if applicable. If transcript was used in support of a motion, counsel is required to provide the taxation clerk with the title of the motion and the approximate date it was filed. If transcript was used at trial, the date the transcript was read into the records is to be noted on the supporting documentation.

Counsel provided no documentation regarding any of the transcripts or videographer fees.

Therefore, Defendant cannot respond appropriately.

Postage

Plaintiff's counsel seeks \$516.75 in postage. (Plaintiff's Exhibit C). The *Bill of Costs Handbook* – section G(2)(h) – specifically states that fees for postage are not allowed.

Therefore, Plaintiff's costs for postage should be denied.

Parking

Plaintiff's counsel seeks \$375.00 for parking. (Plaintiff's Exhibit C). The *Bill of Costs Handbook* makes no provision to collect parking fees. In fact, section G(2)(a) specifically excludes fees incurred for attending depositions, conferences and trial.

Consequently, Plaintiff's costs for parking should be denied.

The Defendant would also note that \$375 in parking seems greatly inflated. Defendant's counsel paid no more than \$10.00 per day at trial in parking fees in Ann Arbor.

Phone Calls

Plaintiff's counsel seeks \$560 in phone charges. (Plaintiff's Exhibit C). The *Bill of Costs Handbook* makes no provision to collect phone charges.

Consequently, Plaintiff's costs for phone calls should be denied.

Again, the Defendant would note that \$560 for phone charges seems greatly inflated and unreasonable.

Legal Research Fees and Outside Attorney Writing

Plaintiff's counsel requests that the Defendant reimburse him for \$4000 in legal research costs using Westlaw and using an outside attorney. (Plaintiff's Exhibit C). The *Bill of Costs Handbook* – sections G(2)(a) and (c) – specifically disallows costs for expenses incurred by investigations and for computerized legal research charges.

Consequently, Plaintiff's costs for Westlaw Research and outside attorney writing should be denied.

Mileage

Plaintiff's counsel seeks \$625 in mileage fees. (Plaintiff's Exhibit C). The *Bill of Costs Handbook* – sections G(2)(a) – specifically disallows costs for expenses incurred by in attending depositions, conferences and trial.

Plaintiff's counsel may have traveled to and from depositions, conferences and trial while litigating this case, but he not entitled to collect mileage fees in doing so. Consequently, Plaintiff's costs for mileage should be denied.

File Copies

Plaintiff's counsel seeks \$360 in copying charges – \$180 for copies of pleadings only; \$100 for copies of correspondence; and \$80 for expert copying charges. (Plaintiff's Exhibit C).

The *Bill of Costs Handbook* – section F – Fees for Exemplification and Copies of Papers

Obtained for Use in the Case specifically states:

The cost of securing translations for exemplification of matters before the court, copies of papers necessarily obtained for use in a case, and the cost of obtaining charges, models, photographs, etc., are not recoverable within the discretion of the taxation clerk **unless** counsel has previously secured an order authorizing the recovery of these costs. Routine copy expenses; those made for service, filing or for the convenience of counsel are not taxable within the discretion of the taxation clerk.

Consequently, Plaintiff's costs for file copies should be denied.

If Plaintiff is allowed costs for copies, he should not be allowed to charge for 3 copies to the Court as stated in his Exhibit C, Itemized Listing of Costs. E.D. Mich L.R. 5.1(b) states "All papers filed with the clerk must include an original and one copy." Therefore, if Plaintiff is allowed costs for copies, he should only be allowed to recover for the amount of 2 copies to the Court.

To sum up, the Plaintiff's counsel may be entitled to some, but certainly not all, of the \$7,552.97 in costs listed in Exhibit C. Since they have provided no documentation, the Defendants cannot adequately respond. The Plaintiff's counsel is not entitled to any costs for postage, parking, phone calls, Westlaw research, mileage or file copies (totaling \$6,436.75) as set forth in Exhibit C.

VI. The Plaintiff is not entitled to any pre or post judgment interest.

The Plaintiff's counsel completely misstated how this Court should calculate interest in this case. His first error is to calculate interest based upon state law. This Court must apply federal procedural law in calculating post judgment interest. Federal law governs the rate of post-judgment interest. *Bailey v. Chattem*, 838 F.2d 149 (6th Cir. 1988). The Plaintiff's counsel chose to bring this case in federal court, they must now live with the consequences of their choice.

28 U.S.C. § 1961 provides in pertinent part:

Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System for the calendar week preceding the date of the judgment.

To date, this Court has not entered a judgment because the Plaintiff's counsel has not submitted one. Since there is no judgment, the Plaintiff is not entitled to any post judgment interest. Any potential interest would be calculated from the date judgment is entered and not the date of the filing of the complaint.

As noted above, it is the Defendant's position that the Plaintiff's counsel is not entitled to any attorney's fees. Consequently, this Court should not add any fees to the judgment when calculating interest.

Moreover, there is nothing in 28 U.S.C. § 1961 which allows for costs to be added to a judgment to calculate interest.

Plaintiff's counsel may cite *Bricklayer's Pension Trust Fund v. Taiarol*, 671 F.2d 988 (6th Cir. 1982) to support his position that he is entitled to prejudgment interest. In *Bricklayer's Pension, supra*, the Sixth Circuit held that the decision to award prejudgment interest is within the District Court's discretion. The Defendant maintains that this Court should decline to award

prejudgment interest because the Plaintiff received a relatively small award. The Defendant's conduct does not merit awarding prejudgment interest.

If the Court does award prejudgment interest, it must do so based on the rates as set forth in 28 U.S.C. § 1961, not state law.

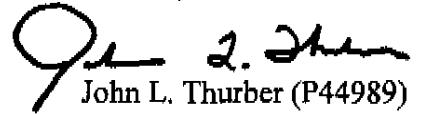
RELIEF

WHEREFORE, the Defendant requests this Court to do the following:

- 1) Deny the Plaintiff's counsel's attorney's fees pursuant to 42 U.S.C. § 1988;
- 2) Deny the vast majority of the Plaintiff's counsel's costs; and
- 3) Deny the Plaintiff's counsel any pre or post judgment interest.

Respectfully submitted,

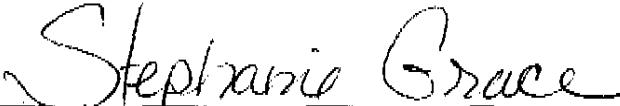
MICHAEL A. COX
Attorney General


John L. Thurber (P44989)
Assistant Attorney General
Corrections Division

Dated: October 26, 2004

Thurber\Kratiff - 2003001639A - USDC\brief in opposition to pls costs\fees

PROOF OF SERVICE: The undersigned certifies that a copy of the foregoing document(s) was served upon the attorneys of record or parties appearing in proper in the above cause by mailing the same to them at their respective address with postage fully prepaid thereon, on October 26, 2004.



Stephanie Grace
Legal Secretary



2003

STATE BAR OF MICHIGAN

Economics of Law Practice

LAW FIRM BILLING RATES AND BILLING PRACTICES

Attorney Hourly Billing Rates

The reported 2003 median hourly billing rate of \$170 represents a 13% increase from \$150 in 2000. (Refer to Exhibit 5 for the trend line since 1984). While several interacting factors affect the setting and application of hourly billing rates, **Exhibit 22** includes five discrete factors:

- Office location
- Size of firm
- Years in practice
- Primary source of income/specialty
- Practice classification or legal occupation

Exhibit 23 arrays hourly rates by office location, expanding the regional categories found on Exhibit 22 to 24 locations. Attorneys located in Southeastern Michigan generally continue to report the highest rates.

Hourly Billing Rates for Associates and Legal Assistants

Median 2003 hourly billing rates for associates and legal assistants are summarized by level of experience in **Exhibit 24** and by firm size in **Exhibit 25**.

For firms using legal assistants, the following trend in client billing patterns was reported:

Billing Pattern for Legal Assistants	% of Responses						
	1984	1988	1991	1994	1997	2000	2003
Included in attorney's rate	25%	24%	21%	21%	16%	25%	26%
Time basis	67	62	70	73	74	65	59
Self-developed fee schedule	7	10	6	3	3	4	7
Other system	2	5	3	3	7	6	8

Billing Practices and Uncollectables

The time since respondents last changed their hourly rate compares over 19 years as follows:

Months Since Hourly Rate Was Changed	% of Responses						
	1984	1988	1991	1994	1997	2000	2003
0-6	20%	28%	25%	26%	26%	26%	24%
7-11	26	21	18	12	12	18	16
12-24	36	33	40	31	33	29	32
25+	18	18	17	31	29	27	28

Sixty percent of the respondents had not changed their rates in one year or more. The percent increase in the level of hourly rates since the last change was:

Amount of Increase	% of Responses						
	1988	1991	1994	1997	2000	2003	
5% or less	19%	19%	27%	26%	25%	26%	
6-10%	40	43	42	40	41	33	
11-19 %	22	20	15	18	18	23	
20% or more	19	18	17	16	16	18	

About 73% of respondents never add a delinquent service charge. Only 7% of respondents usually add a service charge to delinquent accounts, 5% of respondents always add a service charge,

and about 16% sometimes add the charge. For those who add a charge, 18% charge less than 1%, 45% charge 1-2%, and 35% charge over 2%.

Uncollectables remains a serious problem in many firms as follows:

Percent of Fees Billed That Are Uncollectable	% of Responses					
	1988	1991	1994	1997	2000	2003
2% or less	33%	31%	29%	29%	30%	35%
3-8%	32	34	29	28	28	25
9-12%	21	19	23	21	21	21
13% or more	14	16	19	22	21	19

The Average Workweek and Record Keeping Practices

Attorneys report a varied workweek as to billable hours and other activities comprising their professional time. Exhibit 26 distributes the range of time spent on 12 categories or activities. Exhibit 27 considers these distributions as reported by full time private practitioners only. These distributions are broken down by geographic area in Appendices D through I.

For those maintaining time records, 62% track time at six minute intervals, 23% at 15 minute intervals, 8% at ten minute intervals, and 2% at 30 minute intervals. About 5% report no tracking unit.

Exhibit 22		Distributions of 2003 Hourly Billing Rates By Selected Variables, Michigan Attorneys					
		Value by Range and Percentile					
		N	25th.	Median	Mean (Avg.)	75th.	95th
Size of Firm (# of Attorneys)							
1	223	\$130	\$150	\$160	\$180	\$250	
2	51	125	150	158	175	244	
3 to 6	106	150	170	173	200	250	
7 to 10	33	150	200	200	225	350	
11 to 20	37	150	185	195	228	318	
21 to 50	46	150	195	195	238	283	
51 to 100	18	179	263	267	345	425	
>100	29	173	250	241	315	358	
Years In Practice							
4 or less	63	\$125	\$150	\$149	\$150	\$300	
5 to 9	78	135	150	168	175	250	
10 to 14	69	125	150	170	200	278	
15-19	77	150	175	190	220	335	
20-29	154	150	180	188	225	290	
30-39	76	150	175	180	210	280	
40+	37	150	175	188	225	305	
Primary Field of Law							
Bankruptcy (Defense)	15	150	150	177	225	300	
Bankruptcy (Creditor)	14	150	193	208	250	335	
Collections	8	125	150	155	175	210	
Corporate / Business Law	51	150	175	187	220	330	
Criminal (Public Defender)	14	116	150	133	150	160	
Criminal (Private Defendant)	27	150	150	164	185	250	
Domestic Relations (Family Law)	64	126	150	161	175	250	
Employment Law (Management)	6	125	160	174	211	230	
Environmental / Natural Resources Law	6	100	267	221	306	340	
General Practice	33	128	150	156	186	215	
Health and Hospital Law	4	250	275	275	300	310	
Immigration Law	8	164	178	176	200	245	
Intellectual Property	17	218	260	260	328	380	
Labor Law (Management)	6	155	200	210	285	300	
Municipal / Public Entity Law	10	143	175	182	231	275	
Personal Injury (Plaintiff)	26	150	163	170	200	250	
Personal Injury (Defense)	18	109	143	152	159	275	
Real Property Law	47	160	175	184	200	306	
Taxation	16	175	178	231	250	480	
Litigation (Not PI), Defense	14	170	215	213	250	325	
Litigation (Not PI), Plaintiff	14	150	163	176	221	250	
Estate Planning	46	150	165	170	186	233	
Probate (Decedent Estates)	24	168	167	167	200	268	
Probate (Protected Persons)	5	163	175	185	213	225	
Workers' Compensation (Plaintiff)	5	153	200	181	200	200	
Other Fields of Law	17	125	150	155	183	250	
Legal Classification							
Sole practitioner	187	\$140	\$150	\$162	\$180	\$250	
Sole practitioner with 1 or more associates	24	150	178	183	219	275	
Sole practitioner sharing space	43	150	150	165	185	250	
Non-equity partner	13	168	200	202	238	295	
Equity partner	143	170	200	210	250	333	
Senior associate	24	150	190	205	225	406	
Associate	79	125	150	148	165	225	
House Counsel	6	150	163	186	210	315	
Contract Attorney	5	68	125	115	158	185	
All Attorneys	557	\$150	\$170	\$177	\$200	\$295	

Exhibit 23		Distributions of 2003 Hourly Billing Rates By Office Location, Michigan Attorneys				
Office Location	N	Value by Range and Percentile				
		25th.	Median	Mean (Avg.)	75th.	95th
Downtown Detroit	32	\$175	\$210	\$238	\$306	\$440
Remainder S.E. Michigan	174	\$150	\$175	\$186	\$225	\$300
South Oakland County	116	150	180	193	225	300
Lansing	31	150	150	177	210	310
Outstate Metro Areas	91	130	150	160	180	250
Outstate Other	107	125	150	145	170	200
Downtown Detroit	32	\$175	\$210	\$238	\$306	\$440
Detroit, but not downtown	3	150	175	200	275	275
Out county, but in Wayne	39	150	180	165	180	250
Oakland County (N. of Big Beaver)	78	150	193	198	241	341
Oakland County (S. of Big Beaver)	116	150	180	193	225	300
Macomb County (N.of Metro Pky)	15	150	150	158	150	300
Macomb County (S.of Metro Pky)	16	150	175	178	200	275
Ann Arbor	23	160	210	200	225	290
Washtenaw County (Other)	5	115	150	151	188	200
Livingston County	4	156	175	175	194	200
Flint	8	150	150	170	196	275
Genessee County (Other)	7	150	150	157	180	200
Grand Rapids	23	130	175	177	220	274
Other Kent County	4	150	163	169	194	200
Ottawa County	6	108	138	141	175	190
Jackson	7	150	150	156	180	180
Kalamazoo	10	125	143	158	181	250
Lansing	31	150	150	177	210	310
Ingham County (Other)	12	128	150	165	184	250
Muskegon	4	108	152	151	194	200
Saginaw	9	113	125	128	150	165
Traverse City	7	145	150	154	175	185
Out State, Lower Peninsula	73	125	150	144	160	200
Other UP	9	118	125	137	163	175
All Attorneys	557	\$150	\$170	\$177	\$200	\$295

Exhibit 24		2003 Median Hourly Billing Rates, Associates and Legal Assistants by Office Location						
		Firms	All Areas	Downtown	Remainder	Other	S. Oakland	
				Detroit	S.E. Michigan	Metro Areas	County	Outstate
Associates								
New hires without experience	63	\$125	\$135	\$135	\$125	\$135	\$125	\$125
With at least 3 years experience	71	150	145	150	120	150	150	125
With at least 5 years experience	71	150	170	150	125	173	175	140
With at least 10 years experience	74	175	175	190	150	170	185	150
Legal Assistants (Paralegals)								
New hires without experience	41	\$60	—	\$80	\$60	\$83	\$70	\$50
With at least 3 years experience	33	70	—	70	68	95	75	60
With at least 5 years experience	36	78	78	90	68	—	94	65
With at least 10 years experience	47	85	80	75	73	—	93	75

Exhibit 25		2003 Median Hourly Billing Rates, Associates and Legal Assistants by Firm Size					
	Firms	All Areas	1 to 2	3 to 6	7 to 10	11 to 20	>20
			Attorneys	Attorneys	Attorneys	Attorneys	Attorneys
Associates							
New hires without experience	63	\$125	\$120	\$125	\$130	\$130	\$125
With at least 3 years experience	70	150	120	150	150	150	150
With at least 5 years experience	70	150	138	150	155	160	173
With at least 10 years experience	73	175	150	175	185	160	185
Legal Assistants (Paralegals)							
New hires without experience	41	\$60	50	\$55	\$93	\$55	\$70
With at least 3 years experience	33	70	60	55	75	63	85
With at least 5 years experience	36	78	65	65	63	75	100
With at least 10 years experience	47	85	75	73	75	90	100

Exhibit 26		Distributions of Workweek Components In Hours, All Michigan Attorneys, 2003(E)				
Work Week Component (In Hours)		Value by Range and Percentile				
		N	25th.	Median	Mean (Ave.)	75th.
Billable Legal Work						
Based on Hourly Rate	647	15	30	27	40	50
Based on Flat Rate	395	2	10	13	20	45
Based on Contingency work	350	0	5	13	17	50
Total Hours for Chargeable Legal Work	1073	30	40	39	50	60
Other Hours						
Office Administration	677	2	5	5	8	15
Marketing Activities	467	1	2	3	5	10
Unbilled Community/Public Service	513	1	2	4	5	10
Nonlegal employment/personal investments	292	0	0	9	10	47
Total Hours in Workweek	1077	40	46	45	55	67
Other Hours/Year						
Continuing Legal Education	1001	5	10	19	24	50
Unbilled (Pro Bono) Legal Work	839	0	10	27	30	100
Other Unbilled Legal Work	748	0	20	55	50	200

Exhibit 27

Distributions of Workweek Components in Hours, Full Time Private Practitioners Only, 2003(E)

Work Week Component (in Hours)	Value by Range and Percentile					
	N	25th.	Median	Mean (Ave.)	75th.	95th
Billable Legal Work						
Based on Hourly Rate	529	20	30	30	40	55
Based on Flat Rate	309	2	10	13	20	45
Based on Contingency work	303	0	5	13	20	50
Total Hours for Chargeable Legal Work	589	35	40	41	50	60
Other Hours						
Office Administration	504	2	5	5	7	15
Marketing Activities	391	1	2	3	5	10
Unbilled Community/Public Service	389	1	2	3	5	10
Nonlegal employment/personal investments	183	0	0	2	2	10
Total Hours in Workweek	590	40	50	47	56	70
Other Hours/Year						
Continuing Legal Education	559	6	10	18	20	50
Unbilled (Pro Bono) Legal Work	499	2	15	30	40	100
Other Unbilled Legal Work	453	10	30	64	73	250